

KEYWORD: Foreign Influence

DIGEST: The Applicant's mother and two sisters reside in Hong Kong. He also has in-laws who reside in China. However, the Applicant has lived in the U.S. since 1989, where he obtained a Ph.D. from an American university. He became a U.S. citizen in 2004. His wife and two children are all Americans. Their assets in the U.S. total more than \$800,000. He is active in his local church, and his minister thinks highly of the Applicant. Mitigation is shown. Clearance is granted.

CASENO: 06-24783.h1

DATE: 08/09/2007

DATE: August 9, 2007

In Re:

SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 06-24783
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**DECISION OF ADMINISTRATIVE JUDGE
RICHARD A. CEFOLA**

APPEARANCES

FOR GOVERNMENT

Jennifer Goldstein, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's mother and two sisters reside in Hong Kong. He also has in-laws who reside in China. However, the Applicant has lived in the U.S. since 1989, where he obtained a Ph.D. from an American university. He became a U.S. citizen in 2004. His wife and two children are all Americans. Their assets in the U.S. total more than \$800,000. He is active in his local church, and his minister thinks highly of the Applicant. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On January 30, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on February 26, 2007.

The case was received by the undersigned on March 22, 2007. A notice of hearing was issued on March 27, 2007, and the case was heard on April 16, 2007. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on April 26, 2007. The issues raised here are whether the Applicant's perceived Foreign Influence militates against the granting of a security clearance. [The Applicant admits the underlying facts of all of the allegations, to include an amended subparagraph 1.d. This subparagraph was amended to allege that Applicant's last visit to Hong Kong was in 2006, and not in 2005 as originally alleged.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 41, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline B - Foreign Influence

The Applicant came to the U.S. in 1989, eight years prior to Hong Kong's reversion to China in 1997 (TR at page 20 line 15 to page 23 line 24). He obtained a Ph.D. from an American university in 1995 (TR at page 20 lines 5~14). The Applicant was married in 1997 (TR at page 21 lines 11~18). He met his spouse at their church in the U.S. (*Id.*). He became a U.S. citizen in 2004 (TR at page 22 lines 5~22). His wife and two children are all Americans (TR at page 22 line 23 to page 23 line 23).

1.a., and 1.d. The Applicant's 72 year old mother is a citizen of and lives in Hong Kong (TR at page 24 line 15 to page 25 line 19). She never worked for the Hong Kong or Chinese governments, nor was she ever a member of the Communist Party (TR at page 28 line 10 to page 29 line 23). When she dies, the Applicant stands to inherit property in Hong Kong worth about \$30,000~\$40,000 (TR at page 47 line 23 to page 49 line 8). This pales in comparison to his net worth in the U.S. of over \$800,000 (TR at page 51 lines 5~22).

The Applicant traveled to Hong Kong in 2000 and 2002, to visit his parents (TR at page 25

line 20 to page 27 line 4). He traveled to Hong Kong twice in 2003, once to attend his father's funeral (*Id*). The last time the Applicant visited Hong Kong was in 2006, to visit his mother (TR at page 25 line 20 to page 27 line 4).

1.b. The Applicant has two sisters who reside in Hong Kong (Government Exhibit (GX) 1 at page 4). His oldest sister is a British national, and is employed "as a part-time nurse in a hospital" (TR at page 31 lines 8~24). His younger sister is a citizen of Hong Kong, and is employed as "a High School teacher" (TR at page 34 lines 4~10). Neither of his sisters is a member of the Communist Party (TR at page 30 line 23 to page 38 line 19). Both sisters are seeking to emigrate from Hong Kong to the U.S.; and as such, have applied for permanent resident status in the U.S. (TR at page 53 lines 6~15).

1.c. The Applicant's in-laws are citizens of Hong Kong, but reside in China, where the cost of living is cheaper (TR at page 39 line 15 to page 42 line 9). They are both retired, and have never worked for the Hong Kong or Chinese governments (TR at page 43 line 20 to page 44 line 13).

The Applicant would report any attempt at coercion vis-a-vis any of his foreign relatives to the appropriate authorities (TR at page 52 line 11 to page 53 line 5).

As all of the Applicant's relatives, except for his oldest sister, are citizens of Hong Kong, the Special Administrative Region must be considered. Hong Kong is one of the world's most open and dynamic economies. In July of 1997, China resumed the exercise of sovereignty over Hong Kong, ending 150 years of British Colonial rule. Hong Kong has a high degree of autonomy in all matters, except for foreign and defense affairs. Hong Kong will retain its political, economic, and judicial systems and unique way of life for 50 years after reversion and will continue to participate in international agreements and organizations under the name, "Hong Kong, China."

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.

d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.

e. Absence or presence of rehabilitation.

f. Probability that circumstances or conduct will continue or recur in the future.”

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence that is speculative or conjectural in nature.

The Government must make out a case under Guideline B (Foreign Influence), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who is subject to Foreign Influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places.

CONCLUSIONS

The Applicant's mother, and two sisters reside in Hong Kong. He also has in-laws who reside in China. The first and second disqualifying conditions are arguably applicable as this contact “creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion,” and creates “a potential conflict of interests between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person . . . by providing that information.” Under the facts of this particular case, however, these are clearly countered by the first and second mitigating conditions. The nature of the Applicant’s relationship with his Hong Kong relatives is “such that it is unlikely the individual will be placed in a position of having to choose between the interests of . . . [his family] and the interests of the U.S.” Also, the Applicant “has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.”

Not alleged; but argued by the Government, is the Applicant’s potential \$30,000~\$40,000 property interest in Hong Kong. This is not “a substantial . . . property interest in a foreign country,” as required by the fifth disqualifying condition. If it were, however, it pales in comparison to his over \$800,000 in net worth in the U.S. Clearly, under the last mitigating condition, “the value of .

. . [the] property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.”

Furthermore, I am not limited to the mitigating conditions, delineated in the Directive, in deciding if an Applicant has demonstrated extenuation or mitigation. The Applicant’s church minister speaks most highly of him (Appellant’s Exhibit B). The totality of the Applicant’s conduct and circumstances, as set forth at length above, clearly warrants a favorable recommendation under the “whole person concept.” Mitigation is shown. Guideline B is found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his perceived Foreign Influence. The Applicant has thus met the mitigating conditions of Guideline B, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Foreign Influence FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola
Administrative Judge